

# State of California



## Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance • • Administration • • Executive/Legal • • Enforcement  
(916) 322-5662 322-5660 322-5901 322-6441

September 26, 1984

Thomas W. Smith III  
General Counsel  
Santa Rosa Community Services Dist.  
c/o Smith & Peltzer  
751 E. Rancheros Drive  
San Marcos, CA 92069

Re: Your Request for Advice,  
Our Advice No. A-84-201

Dear Mr. Smith:

You have written requesting advice on behalf of all five members of the Santa Rosa Community Services District (SRCSD) concerning a decision on the establishment of a proposed assessment district, within the SRCSD.

### FACTS

The SRCSD is geographically approximately 17,500 acres. This area was subdivided by Kaiser-Aetna Corporation (KACOR). It consists of lots with a minimum lot size of five acres and an average size of approximately ten acres. As development occurred, five homeowner associations were formed within the overall development. However, the combined geographic areas of the homeowners associations do not encompass all of the area covered by the SRCSD.

The KACOR development has certain problems with the roads which has led to litigation between the homeowners associations and KACOR. As a result, those areas covered by the litigating associations do not wish to participate in the assessment district at this time because they fear any road improvements made by the district might mitigate the damages sought from KACOR. However, the non-litigating area wishes to go forward with formation of an assessment district. If the assessment district is formed, the assessments made by the district would only go toward road work within the district and not in the other areas.

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Four of the directors of the SRCSD, Henry Williams, Allen Barnum, Richard Smith and Paul Bein, own parcels in areas covered by, and are members or directors of, homeowner associations. The fifth director, John Thomas, owns a parcel in an area not covered by a homeowners association. Thomas' property is in the area to be covered by the proposed assessment district. The other directors' properties are not in the proposed assessment district. The SRCSD directors are elected at large and do not represent specific districts.

The SRCSD jurisdiction consists of five zones, described as follows, with the first zone representing the area of the proposed assessment district, in which Director John Thomas' property is located:

|        | <u>Parcels</u> | <u>Acres</u> |
|--------|----------------|--------------|
| Zone 1 | 336            | 5,000        |
| Zone 2 | 46             | 927          |
| Zone 3 | 99             | 1,528        |
| Zone 4 | 682            | 5,711        |
| Zone 5 | <u>274</u>     | <u>4,351</u> |
|        | 1437           | 17,517       |

The total number of parcels which will be included within the Assessment District is 336. You have advised that under assessment district law, the owners of lots representing more than 50% of the district's land may block formation of the district by filing a protest.

#### QUESTION

You have stated your question as follows:

The question of a conflict of interest seems to be involved with Government Code Section 87100 which would concern the actions of a member of the Board of Directors of the District which would concern his financial interest. If the director votes for the establishment of the Assessment District, he obtains no greater advantage than other property owners in the Assessment District in that all would receive some benefit from the paving or improvement of the roads. However, the question arises whether a director

should either abstain from voting upon the question or could be prohibited from voting on the establishment of the Assessment District when his vote could have an effect on the litigation in which he has a financial interest.

#### CONCLUSION

Directors Williams, Barnum, Smith and Bien may participate in the decision on whether or not to form the Assessment District assuming that any financial effect upon them as a result of the litigation will not be distinguishable from the effect upon 1101 other owners; this group constitutes a significant segment of the public generally. Director Thomas may also participate because the effect of formation of the district upon him will not be distinguishable from the effect upon a significant segment of the public generally. An effect upon 336 parcels, owned by a diverse group of owners whose only common thread is ownership, is an effect upon a significant segment of the public generally.

#### ANALYSIS

##### Assumptions

In making the analysis which follows, we have relied upon certain assumptions from the facts given. These assumptions are critical to the analysis and if any of them are inaccurate, you should request further advice before the directors act in reliance upon the advice contained in this letter.

1. Directors Williams, Barnum, Smith and Bein will be affected by the Assessment District decision or the litigation in substantially the same manner as the other parcel-owners which are not located in the area of the proposed Assessment District. If their damages in the litigation would be significantly greater, or they own substantially more property than other owners, this may not be the case and you should advise us so that we may reconsider our advice.

2. The decisions in question will, in fact, have a reasonably foreseeable material financial effect upon the real property interests of all the directors in question. We have not been provided sufficient information to enable us to make an independent determination of this issue; however, it seems logical from the facts given.

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3. We have been provided information as to the number of parcels involved. We do not know if any one individual owns many parcels or not. We assume that this is not the case and that there are approximately as many owners as there are parcels.

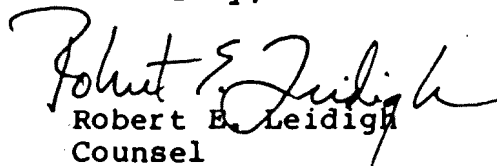
### Discussion

Given that a material financial effect is assumed, our analysis is confined to whether the "public generally" exemption from disqualification applies. Government Code Section 87103; 2 Cal. Adm. Code Section 18703. The general public in this case is all the parcel owners of the jurisdiction (1,437). Regardless of what may constitute a "significant segment" of the general public in any given case,<sup>1/</sup> in a relatively small (numerically) public such as this case, both 1,101 parcels, and 336 parcels, so long as the owners are diverse, will be sufficient in number to meet the standard of the statute and its interpretive regulation. See generally, Opinions requested by William Owen, 2 FPPC Ops. 77 (No. 76-005); F. MacKenzie Brown, 4 FPPC Ops. 19 (No. 77-024); John Ferraro, 4 FPPC Ops. 62 (No. 78-009); and Martin Overstreet, 6 FPPC Ops. 12 (No. 80-010) (copies enclosed).

Applying these Opinions to the four directors who will be affected in substantially the same manner as 75% of the SRCSD, we conclude that they may participate. As stated above, the director who will be affected in a manner which is not distinguishable from the other 25% of the SRCSD also need not disqualify himself.

If you have any questions regarding this advice, please call me at 916/322-5901.

Sincerely,

  
Robert E. Leidigh  
Counsel  
Legal Division

REL:km

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<sup>1/</sup> The "public generally" analysis is a case-by-case process. See Ferraro Opinion, infra.

# Memorandum

To : File

Date : Sept. 6, 1984

From : FAIR POLITICAL PRACTICES COMMISSION

Robert E. Leidigh *REL*

Subject: Thomas W. Smith III - Advice Letter No. A-84-201

Time extended due to need to clarify certain facts. Telephone conversations with Smith over the past week have brought out new facts. Partial advice rendered this date orally, full oral advice will be rendered tomorrow following discussions based upon new facts and letter will follow. Next meeting of SRCSD board is not until 9/26. This is O.K. with Smith.

REL:plh

*P.S. 9/6/85 - Put question over until next Advice request meeting due to absence of General Counsel.*

# State of California



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(916) 322-5662 322-5660 322-5901 322-6441

August 7, 1984

Thomas W. Smith III  
Smith & Peltzer  
751 E. Rancheros Drive  
San Marcos, CA 92069

Re: A-84-201

Dear Mr. Smith:

Your letter requesting advice under the Political Reform Act has been referred to Robert E. Leidigh, an attorney in the Legal Division of the Fair Political Practices Commission. If you have any questions about your advice request, you may contact this attorney directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,

*Barbara A. Milman*  
Barbara A. Milman  
General Counsel

BAM:plh

103 - 6 1984

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AREA CODE 619  
TELEPHONE: 744-7125

July 26, 1984

Fair Political Practices Commission  
Post Office Box 807  
Sacramento, California 95804

Attn: Barbara Milman, General Counsel

Re: Request for Advice on Conflict of Interest

Our office represents the SANTA ROSA COMMUNITY SERVICES DISTRICT formed in the County of Riverside. The District is formed under the Community Services District law and presently exercises powers under Section 20681 of the Public Contracts Code, Subsection J and K with the consent of the County of Riverside to exercise the powers contained in those sections concerning roads in the Community Service District. The District has five (5) directors elected at large from the District area.

The Board of Directors determined that the District would undertake the formation of an Assessment District for the paving of unpaved roads in the District and the resurfacing where required of paved roads of the District. The District has undertaken preliminary engineering work to determine the scope of the work required.

The main geographical area of the District was originally a subdivision created by Kaiser-Atena Corporation, Real Estate Division. In the process of the development of the project, homeowner associations were created which initially were to maintain common areas within their association. Five (5) homeowner associations were created but they did not cover the total area of the Community Services District as it was formed. The homeowner association areas did cover a major portion of the District. When the District was formed and commenced to work the District was divided for convenience benefit zones. Each of the zones included a Home Owners Association Area but also incorporated some area not included in an association. The zones have been utilized to facilitate the determination of necessary work and assist in determining fair charges for work to be performed.

Litigation has arisen between the homeowner associations and Kaiser-Atena Corporation which is referred to as KACOR as an acronym for simplicity sake, concerning the construction and design of the roads of the District. The homeowners associations have taken the position that KACOR should pay the associations damages due to the inadequate road construction. This litigation has been progressing for at least three (3) years.

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An issue of the litigation is whether work performed by the Community Services District would enable the defendant to claim that there was no damage in that corrective District road work has been done by a public agency, so that there would be no direct financially reimbursable impact upon the plaintiffs.

The Board of Directors is presently composed of one director who is in a benefit zone which is not involved in the litigation. Apparently the Homeowners Association in that benefit zone had made a settlement with KACOR and was no longer a part of that litigation. Of the other four directors, all are members of Homeowners Association which are involved in the litigation. Two of the directors are members of the Board of Directors of a Homeowners Association and two of the directors are members of an association but are not serving on any Board of Directors of the association.

The question of a conflict of interest seems to be involved with Government Code Section 87100 which would concern the actions of a member of the Board of Directors of the District which would concern his financial interest. If the director votes for the establishment of the Assessment District, he obtains no greater advantage than other property owners in the Assessment District in that all would receive some benefit from the paving or improvement of the roads. However, the question arises whether a director should either abstain from voting upon the question or could be prohibited from voting on the establishment of the Assessment District when his vote could have an effect on the litigation in which he has a financial interest.

There has been no direct challenge to action taken by any director in the matter and all votes taken have been concerned with the necessary preliminaries to the creation of the Assessment District. All work at this point has been preliminary work concerned with engineering and formation studies. Your consideration of this matter and the rendering of an opinion will be of assistance to the Board of Directors.

Very truly yours,

SMITH & PELTZER, A.P.C.  
General Counsel  
SANTA ROSA COMMUNITY SERVICES DISTRICT

By   
THOMAS W. SMITH III

TWS/sj

cc: John T. Schulte



5/30/84

(6/19) 744 7105

Ass. Dist. John Thomas



Comm. Serv. Dist

Henry Williams  
Allen Barnum  
Richard Smith  
Paul Beir

When first conceived, all members  
would be in assessment district.  
South end of area wants to  
go forward w/ Ass. Dist.  
Other areas, which have homogeneous  
assessors, are saying don't want to do it.  
Directors are directors at large

1 is in Ass. Dist. once  
after 4 are out

6.1.80  
Approx 20% in assessment dist.  
Area

Whatever comes out of City, at RHC will still  
have to form ass. dist.

Only change to ass. dist. now formed, could  
be for work w/m flat dist.

Table of decision on the outgroups will be  
presumably the same - based on benefit ratio  
above benefit.

Zone 1 - Ass. Dist. (P. 1) - 5 residences  
Zone 2 2 residences 122 acres 5,000 acres  
Zone 3 10 res 1500 acres most lots owned by  
Zone 4 20 res 5110 acres industrial - lots  
Zone 5 20 res 9550 acres only 50 res  
very few are here

(619) 744-7175

Assoc. areas include  
both residential &  
unimproved property

Litigation will benefit.